



United States General Accounting Office
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Office of the General Counsel

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July 28, 2000

The Honorable John McCain
Chairman
The Honorable Ernest F. Hollings
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Federal Communications Commission: Narrowband Personal
Communications Services; Competitive Bidding

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Communications Commission (FCC), entitled "Narrowband Personal Communications Services; Competitive Bidding" (GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253; FCC 00-159). We received the rule on July 14, 2000. It was published in the Federal Register as a final rule on June 6, 2000. 65 Fed. Reg. 35843.

The final rule modifies the FCC's existing narrowband Personal Communications Services (PCS) rules. These modifications include the use of Major Trading Areas for future licensing, the establishment of a "substantial service" alternative to the current construction benchmarks, and modifications to certain provisions of the PCS competitive bidding rules. Also, the final rule eliminates the narrowband PCS spectrum aggregation limit and adopts partitioning and disaggregation rules.

Enclosed is our assessment of the FCC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the FCC complied with the applicable requirements with one exception.

The final rule has an announced effective date of August 7, 2000. The Congressional Review Act requires major rules to have a 60-day delay in their effective date following publication in the Federal Register or receipt of the rule by Congress, whichever is later. 5 U.S.C. 801(a)(3)(A). While the rule was published in the Federal Register on June 6, 2000, it was not received by Congress until July 14, 2000. Therefore, the final rule will not have the required 60-day delay in the effective date.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Stanley Czerwinski, Associate Director for Housing and Community Development Issues. Mr. Czerwinski can be reached at (202) 512-7631.

Robert P. Murphy
General Counsel

Enclosure

cc: Ms. Diane Cornell
Associate Chief, Wireless
Telecommunications Bureau
Federal Communications Commission

ENCLOSURE

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
"NARROWBAND PERSONAL COMMUNICATIONS SERVICES;
COMPETITIVE BIDDING"
(GEN DOCKET NO. 90-314, ET DOCKET NO. 92-100,
PP DOCKET NO. 93-253; FCC 00-159)

(i) Cost-benefit analysis

The FCC is not required to prepare and did not prepare a cost-benefit analysis of the final rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The FCC prepared an Initial Regulatory Flexibility Analysis in connection with the Notice of Proposed Rulemaking and a Final Analysis for the final rule. The analyses contain the information required by the Act, including the need and purpose of the rule, a description and an estimate of the number of small entities to which the rule will apply, and the steps taken to minimize the burden on small entities.

The steps taken to minimize the burden include bidding credits, partitioning and disaggregation, and demonstration of "substantial service" as an alternative to meeting the coverage requirements of the final rule.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the FCC is not subject to title II of the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedures contained in 5 U.S.C. 553. On May 20, 1997, the FCC published a Notice of Proposed Rulemaking in the Federal Register. 62 Fed. Reg. 27507. The FCC received 15 comments and 16 reply comments in response, which it discusses in the preamble to the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains a revised information collection that is subject to review by the Office of Management and Budget. The preamble to the final rule contains the information required regarding the collection, including the estimated annual burden. FCC estimates that there will be 1,500 respondents and the estimated per response time is 3.5 hours for a total annual burden of 5,250 hours and \$1,050,000.

Statutory authorization for the rule

The final rule is issued pursuant to the authority contained in sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(r), and 309(j).

Executive Order No. 12866

As the rule is promulgated by an independent regulatory agency, it is not subject to the review requirements of E.O. 12866.